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P.O. BOX 2786  
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In re Application of	:	
Warner	:	
Application No.: 10/527,046	:	DECISION
PCT No.: PCT/GB03/03895	:	
Int. Filing Date: 09 September 2003	:	ON
Priority Date: 13 September 2002	:	
Attorney Docket No.: 920602-98737	:	PETITION
For: Construction Kit	:	

This is a decision on applicants' "Petition To Withdraw Holding Of Abandonment..." filed on 08 May 2006.

### BACKGROUND

This international application was filed on 09 September 2003, claimed a priority date of 13 September 2002, and designated the United States. The International Bureau transmitted a copy of the published international application to the USPTO on 25 March 2004. Consequently, the thirty month period for payment of the basic national fee in the United States expired as of midnight on 13 March 2005. On 08 March 2005, applicants filed *inter alia* the basic national fee.

On 22 July 2005, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the submission of an executed oath or declaration of the inventors and a surcharge under 37 CFR 1.492(e).

On 26 April 2006, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicants, indicating that this international application had become abandoned with respect to the national stage in the United States for failure to timely reply to the Notification of Missing Requirements mailed on 22 July 2005.

### DISCUSSION

Petitioner states that "The Notification states that a Notification of Missing Requirements was allegedly mailed by the Patent and Trademark Office on July 22, 2005. However, no such document was ever received by the undersigned or the firm of the undersigned," and requests withdrawal of the holding of abandonment on that basis. As explained in MPEP 711.03(c), and following *Delgar v. Schuyler*, 172 USPQ 513 (D.D.C. 1971), an adequate showing of non-receipt of papers mailed to applicant by the Office must include (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket records must also be referenced in petitioner's statement).

Petitioner has satisfied requirement (1).

With respect to requirement (2), petitioner states in part that "Appended hereto is a copy of the docket entries of the firm of the undersigned showing base dates (PTO action dates) of July 22, 2005. Had the Notification of Missing Requirements been received, it would have been docketed for a response deadline of September 22, 2005. As can be seen, there is no information regarding this application (file number 920602-98737) because the Notification of Missing Requirements was never received." Though this statement arguably implies that the docket records were inspected, the petition does not include an explicit statement that a search of both the file jacket and docket records indicates that the Office action was not received. Such a statement should be made by a person having first-hand knowledge of the facts involved (i.e., by the person who conducted the search). Therefore, requirement (2) has not been satisfied at this time.

Concerning requirement (3), the instant petition is accompanied by sheets which petitioner characterizes as "docket entries of the firm of the undersigned showing base dates (PTO action dates) of July 22, 2005." However, the required docket records are those records showing all applications docketed for responses due on 22 September 2005, not just applications in which the USPTO mailed correspondence on 22 July 2005 (ideally, such records would include a "tickler sheet" listing all of the application or docket numbers with responses due on 22 September 2005). The submitted docket sheets do not clearly satisfy requirement (3).

### CONCLUSION

The petition to withdraw the holding of abandonment is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include be entitled "Renewed Petition Under 37 CFR 1.181."

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the correspondence to the attention of the Office of PCT Legal Administration.



George Dombroske  
PCT Legal Examiner  
Office of PCT Legal Administration  
Tel: (571) 272-3283  
Fax: (571) 273-0459